

AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1769

**Introduced by Assembly Member Robert Pacheco
(Principal coauthor: Assembly Member Campbell)
(Coauthors: Assembly Members Battin, Cox, Dickerson,
House, Maddox, Rod Pacheco, and Pescetti)**

January 19, 2000

~~An act to amend Section 191.5 of the Penal Code, relating to vehicular manslaughter.~~ *An act to amend Section 191.5 of the Penal Code and to add Article 3.5 (commencing with Section 23570) to Chapter 2 of Division 11.5 of the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, as amended, Robert Pacheco. ~~Gross vehicular manslaughter~~ *Vehicles: fetus.*

~~Existing~~

(1) Existing law punishes as a felony, gross vehicular manslaughter, and defines it as the unlawful killing of a human being without malice aforethought, in the driving of a vehicle in violation of specified provisions of law, where the killing was either the proximate result of an unlawful act, not amounting to a felony, committed with gross negligence, or the proximate result of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

This bill would include the killing of a fetus in the above provision. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law punishes a person under the age of 21 years convicted of driving a vehicle with a specified percentage of alcohol by weight in his or her blood as an infraction. Existing law punishes an adult convicted of driving a vehicle under the influence of an alcoholic beverage or drug as a misdemeanor. Existing law punishes a person who drives a vehicle under the influence of an alcoholic beverage or drug and proximately causes bodily injury to any other person by imprisonment in the state prison or in a county jail for not less than 90 days nor more than one year and a fine.

This bill would punish a person convicted of these provisions, which results in the death of a fetus, by imprisonment in the state prison for 2, 3, or 4 years. By increasing the punishment of existing crimes, the bill would impose a state-mandated local program.

~~The~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 191.5 of the Penal Code is
2 amended to read:
3 191.5. (a) Gross vehicular manslaughter while
4 intoxicated is the unlawful killing of a human being, or a
5 fetus, without malice aforethought, in the driving of a
6 vehicle, where the driving was in violation of Section
7 23140, 23152, or 23153 of the Vehicle Code, and the killing
8 was either the proximate result of the commission of an
9 unlawful act, not amounting to a felony, and with gross
10 negligence, or the proximate result of the commission of



1 a lawful act which might produce death, in an unlawful
2 manner, and with gross negligence.

3 (b) Gross vehicular manslaughter while intoxicated
4 also includes operating a vessel in violation of subdivision
5 (b), (c), (d), (e), or (f) of Section 655 of the Harbors and
6 Navigation Code, and in the commission of an unlawful
7 act, not amounting to felony, and with gross negligence;
8 or operating a vessel in violation of subdivision (b), (c),
9 (d), (e), or (f) of Section 655 of the Harbors and
10 Navigation Code, and in the commission of a lawful act
11 which might produce death, in an unlawful manner, and
12 with gross negligence.

13 (c) Gross vehicular manslaughter while intoxicated is
14 punishable by imprisonment in the state prison for 4, 6,
15 or 10 years.

16 (d) Any person convicted of violating this section who
17 has one or more prior convictions of this section or of
18 paragraph (1) or (3) of subdivision (c) of Section 192,
19 subdivision (a) or (c) of Section 192.5 of this code, or of
20 violating Section 23152 punishable under Sections 23540,
21 23542, 23546, 23548, 23550, or 23552 of, or convicted of
22 Section 23153 of, the Vehicle Code, shall be punished by
23 imprisonment in the state prison for a term of 15 years to
24 life. Article 2.5 (commencing with Section 2930) of
25 Chapter 7 of Title 1 of Part 3 shall apply to reduce the
26 term imposed pursuant to this subdivision.

27 (e) This section shall not be construed as prohibiting
28 or precluding a charge of murder under Section 188 upon
29 facts exhibiting wantonness and a conscious disregard for
30 life to support a finding of implied malice, or upon facts
31 showing malice consistent with the holding of the
32 California Supreme Court in *People v. Watson*, 30 Cal. 3d
33 290.

34 (f) This section shall not be construed as making any
35 homicide in the driving of a vehicle or the operation of a
36 vessel punishable which is not a proximate result of the
37 commission of an unlawful act, not amounting to felony,
38 or of the commission of a lawful act which might produce
39 death, in an unlawful manner.

1 SEC. 2. *Article 3.5 (commencing with Section 23570)*
2 *is added to Chapter 2 of Division 11.5 of the Vehicle Code,*
3 *to read:*

4

5 *Article 3.5. Enhanced Punishments*

6

7 *23570. Notwithstanding any other provision of law,*
8 *any person convicted of a violation of Section 23140,*
9 *23152, or 23153 in which a vehicular collision or vehicular*
10 *accident proximately results in the death of a fetus shall*
11 *be punished by imprisonment in the state prison for 2, 3,*
12 *or 4 years.*

13 SEC. 3. No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution because the only costs that may be incurred
16 by a local agency or school district will be incurred
17 because this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition
21 of a crime within the meaning of Section 6 of Article
22 XIII B of the California Constitution.

